

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 98-7281**

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DONNIE WAYNE CLARK,

Plaintiff - Appellant,

versus

D. CAMPBELL, Correctional Officer, Mailroom  
Supervisor, individually and in his official  
capacity; A.G. LEA, Sgt./Institution Investi-  
gator, individually and in his official ca-  
pacity; E. E. COLEMAN, JR., Clerk of Court,  
individually and in his official capacity,

Defendants - Appellees.

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Appeal from the United States District Court for the Eastern Dis-  
trict of Virginia, at Richmond. Robert E. Payne, District Judge.  
(CA-93-3)

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Submitted: June 8, 1999

Decided: June 18, 1999

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Before LUTTIG and MICHAEL, Circuit Judges, and PHILLIPS, Senior  
Circuit Judge.

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Dismissed by unpublished per curiam opinion.

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Donnie Wayne Clark, Appellant Pro Se.

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Unpublished opinions are not binding precedent in this circuit.  
See Local Rule 36(c).

PER CURIAM:

Donnie Wayne Clark appeals from the district court's order dismissing without prejudice his 42 U.S.C.A. § 1983 (West Supp. 1999) complaint. The district court's dismissal without prejudice is not appealable. See Domino Sugar Corp. v. Sugar Workers' Local Union 392, 10 F.3d 1064, 1066-67 (4th Cir. 1993). A dismissal without prejudice is a final order only if "'no amendment [in the complaint] could cure the defects in the plaintiff's case.'" Id. at 1067 (quoting Coniston Corp. v. Village of Hoffman Estates, 844 F.2d 461, 463 (7th Cir. 1988)). In ascertaining whether a dismissal without prejudice is reviewable in this court, the court must determine "whether the plaintiff could save his action by merely amending his complaint." Domino Sugar, 10 F.3d at 1066-67. In this case, Appellant may move in the district court to reopen his case and to file an amended complaint specifically alleging facts sufficient to state a claim under 42 U.S.C.A. § 1983. Therefore, the dismissal order is not appealable. Accordingly, we dismiss the appeal for lack of jurisdiction. In light of this disposition, we deny Clark's motion for a court order to address the payment of the installments on his filing fee. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

DISMISSED